

APPEAL NO. 040491
FILED APRIL 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 3, 2004. The hearing officer determined that the respondent's (claimant) _____, compensable injury includes reflex sympathetic dystrophy (RSD) of the upper right extremity, and that the claimant had disability beginning February 28, 2002, and continuing through the date of the hearing. The appellant (carrier) appeals on sufficiency of the evidence grounds, requesting that the Appeals Panel reverse the above determinations "and render a decision in accordance with the evidence." In the alternative, the carrier requests that the case be remanded with instructions that the claimant fully comply with a Texas Workers' Compensation Commission (Commission) required medical examination (RME), "and for appointment of a different hearing officer unbiased by an association with claimant's last-minute medical witness." The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of extent-of-injury and disability determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Conflicting medical opinions were presented at the hearing on the disputed issue of whether the compensable injury includes RSD of the upper right extremity. The carrier made essentially the same arguments on appeal that it made during the hearing concerning the credibility of the claimant and the weight that should be given to the conflicting medical evidence. The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Since the carrier's arguments concerning disability are premised on its argument that RSD of the upper right extremity is not included in the compensable injury, we likewise affirm the determination that the claimant has disability as found by the hearing officer.

As mentioned above, the carrier requested “appointment of a different hearing officer unbiased by an association with claimant’s last-minute medical witness.” To the extent that this comment raises any question about the fairness of the hearing, we note that there was no objection at all made during the hearing, nor was there any development of facts in the record, concerning an “association” of any kind between the hearing officer and the witness. In addition, in our review of the record, we do not find any evidence that the hearing officer was motivated by bias or in any way demonstrated bias in favor of the claimant. The mere fact that the hearing officer issued a decision adverse to the carrier does not, in our view, demonstrate bias but is the prerogative of the hearing officer as the sole judge of the weight and credibility of the evidence. Accordingly, we find no basis to grant the relief requested by the carrier.

The carrier contended that the claimant failed to fully comply with the Commission RME doctor’s examination, referring to that doctor’s note that the claimant limited the examination with complaints of pain. The carrier requested remand on this basis. We decline to grant that relief. The hearing officer weighs the evidence and was satisfied from the evidence that he had before him that the claimant met her burden of proof on the disputed issues.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge